

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

BETH CHANEY MACNEILL
Plaintiff

VS.

**NIRMAL JAYASEELAN, M.D and TEXAS
HEALTH HARRIS METHODIST
HOSPITAL FORT WORTH**

CIVIL ACTION NO. 4-14CV-242-0

Defendants

PLAINTIFF'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

NOW COMES BETH CHANEY MACNEILL, *Plaintiff* in the above-entitled and numbered cause and files this Plaintiff's Motion for Leave to File an Amended Complaint.

Federal Rule of Civil Procedure 15(a)(2) states that "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Plaintiff requests to amend the petition due to the discovery of fraudulent misrepresentations and fraudulent concealment by Dr. Nirmal Jayaseelan.

Rule 15(a)(2) is to be granted liberally unless the movant has acted in bad faith or with a dilatory motive, granting the motion would cause prejudice, or amendment would be futile.

Lewis v. Tex. Instruments, No. 3:12-cv-4577-L-BN, 2014 U.S. Dist. LEXIS 96152 (N.D. Tex. June 23, 2014) quoting *Jebaco Inc. v. Harrah's Operating Co., Inc.*, 587 F.3d 314, 322 (5th Cir. 2009). *Rule 15(a)(2)*'s policy "is to permit liberal amendment to facilitate determination of claims on the merits and to prevent litigation from becoming a technical exercise in the fine

points of pleading." *Lewis*, 2014 U.S. Dist. LEXIS 96152 *8-9 quoting *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 598 (5th Cir. 1981). Rule 15(a) provides a "strong presumption in favor of granting leave to amend," *Fin. Acquisition Partners, LP v. Blackwell*, 440 F.3d 278, 291 (5th Cir. 2006), and the Court must do so "unless there is a substantial reason to deny leave to amend." *Dissouy*, 660 F.2d at 598.

Plaintiff asserts that justice requires allowing Plaintiff to amend her petition. Plaintiff made multiple good faith efforts to depose Defendant Jayaseelan beginning July 31, 2014, and ultimately noticed his deposition for October 17, 2014. During that deposition, Plaintiff discovered that Dr. Jayaseelan misrepresented Beth MacNeill's preoperative diagnosis and fraudulently concealed the surgical procedure actually performed. Plaintiff is not acting with a dilatory motive and the amendment would not be futile.

WHEREFORE PREMISES CONSIDERED, Plaintiff respectfully requests that this Court grant her Motion for Leave to File an Amended Complaint *attached hereto as Exhibit 1 pursuant to LR 15.1(b)*.

Respectfully Submitted,

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/s/Robert Hammer
Robert W. Hammer
State Bar No. 08854780

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

I hereby certify that on November 21, 2014, I contacted the law offices of Jeff Ryan and Greg Blaies. Neither Jeff Ryan, nor Jarad Kent, nor Greg Blaies, nor Jim Hryekewicz were available. I then asked to speak to anyone with authority to agree or disagree to Plaintiff's Motion for Leave to File an Amended Complaint. No one was available and I did not receive a return call. I hereby certify that on November 24, 2014, I spoke with representatives from the law offices of Jeff Ryan and Greg Blaies. Once again, neither Jeff Ryan, nor Jarad Kent, nor Greg Blaies, nor Jim Hryekewicz were available. Therefore, this motion is submitted without an agreement.

/s/Robert Hammer
Robert W. Hammer

CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2014, I electronically filed the foregoing with the Clerk for the U.S. District Court, Northern District of Texas, using the ECF system which will send notification of such filing to the following counsel of record:

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/s/Robert Hammer
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